IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 882 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRATBHAI BABHAI BORPI
Versus
STATE OF GUJARAT

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Appearance :
MR JB PARDIWALA for the Appellant
PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/12/2007

ORAL JUDGMENT:

This appeal arises out of a judgment and order dated 9th September 1997 rendered by the learned Additional Sessions Judge, Valsad in Sessions Case No.139 of 1991.

As per the prosecution case, the appellant herein – original accused had on 11th May 1991 given stick blows to deceased – Jivalabhai when he, along with other persons were carrying bamboo sticks. The injury resulted into death of Jivalabhai. The appellant was, therefore, charged with the offence punishable under Section 302 of Indian Penal Code. The learned Additional Sessions Judge though found that the appellant had caused injuries to the deceased – Jivalabhai, considering the nature of the blows given convicted him under Section 304(II) of the Indian Penal Code and sentenced him to undergo RI of five years and fine of Rs.1,500/-.

To prove the charge, the prosecution examined Jahrubhai, PW No.2 at Exhibit 13. He has stated that he, his wife, Jivalabhai and his wife were on the date of the incident were carrying bamboo sticks from the field of Jivalabhai. At about 1o O' clock at night when they were going to village Nanivahyad the appellant caught him and started beating him because they were carrying the bamboos. The witness, therefore, started shouting. Jivalabhai, therefore, came there. Accused started beating Jivalabhai with the help of stick. Jivalabhai was given stick blows on the leg. He had, therefore, fallen down. Jivalabhai was lying there all through the night. Jivalabhai, his wife and wife of the witness were also there. Next day, Jivalabhai was carried for treatment. He later on expired.

In the cross-examination he stated that he knew the accused beforehand. He supported that there were 2 – 3 other persons with the accused. He, however, did not know them.

Wife of deceased – Jivalabhai i.e. Shantaben, PW No.3, was examined at Exhibit 14. She also narrated the incident in somewhat similar fashion. She has stated that they were carrying bamboo sticks from their village. At that time along with her, her husband, Jahrubhai

and his wife were present. Near Nani Vahiyad village the appellant started beating them with a big bamboo stick. Her husband got hurt on the left leg and stomach. Since his leg was broken down, he fell down. Jahrubhai also received injuries. Next day at about 12.00 O' clock one Rameshbhai came there with rickshaw. Her husband was carried tot he police station in the rickshaw. In the cross-examination, she also stated that there were other persons with the appellant.

P.W.No.4, Sonaiben is wife of Jahrubhai, PW No.2. In her deposition at Exhibit 16 she has stated that the appellant had beaten all of them, particularly her husband and Jivalabhai. Jivalabhai was hit on the leg and in the stomach with a stick.

At this stage, it may be noted that all these witnesses stated that the muddamal article stick was not the weapon which was used by the appellant, but the same was much bigger than what was shown to them before the Court.

Dr Pradip Mistry, PW No.12, Exhibit 32 was the one who treated Jivalabhai in Valsad Civil Hospital. He had operated on the patient on 13th May 1991. He had found that the patient had received injury on the right leg and his knee had got dislocated. The pulse of the veins below the knee were erratic and the leg had got swollen. He also produced the post mortem in which injuries on the leg, shoulder and on the waist were noticed. Significantly, the death of the deceased was on account of the malfunctioning of the kidney due to the injury on the knee of the patient.

From the above evidence on record, it can be seen that the involvement of the appellant in the incident was established by the prosecution beyond doubt. As many as three eye witnesses i.e. Jahrubhai, PW No.2, Shantaben, PW No.3 and Sonaiben, P.W.No.4 had narrated the incident of the appellant attacking the deceased and other

members of the party with the bamboo stick. Apparently, the quarrel was about carrying of bamboo sticks by the deceased and other persons. Though there is some discrepancy and doubt about the persons other than the appellant involved in the incident, the same cannot take away the fact that the appellant was involved in the beating of the deceased and PW No.2 as well. The fact that the appellant had given stick blows to the deceased on the right knee remains proved beyond doubt.

The eye witness accounts of the above mentioned witnesses was corroborated by the medical evidence and the deceased was found carrying serious injury on the right leg near the knee.

In the result, the allegation of the appellant of having beaten the deceased with a bamboo stick was rightly believed by the learned Judge to have been true.

The question is would it still justify of conviction of the appellant under Section 304(II) of the Indian Penal Code.

From what is established on record it would emerge that the appellant had given couple of blows to the deceased on the knee. The blows were given with a stick and were given not on any vital part of the body. It is true that the injury created complication in functioning of the kidney, which, ultimately, resulted into death of the deceased. However, it cannot be said that the appellant inflicted the said injury with the knowledge that it is likely to cause death. His conviction, therefore, should appropriately be under Section 325 of the Indian Penal Code. It can, however, not be denied that the appellant caused grievous injury to the deceased. His conviction, therefore, should appropriately be under Section 325 of the Indian Penal Code.

At this stage, learned advocate for the appellant submitted that considering the age of the appellant and the passage of time, he be given the benefit of probation. Considering, however, the nature of the

incident and the nature of the injury reflecting the severity with which the appellant must have given stick blows to the deceased, I do not find the benefit of probation should be given to him.

Appeal stands partially allowed to the above extent.

The learned advocate for the appellant, in the alternative, submitted that instead of imposing any substantive sentence of imprisonment on the appellant, he may be directed to pay higher fine to compensate the family of the deceased. The suggestion is accepted. Considering the offence for which the appellant is convicted in this judgment, considering the passage of time and other attendant circumstances, it is directed that the appellant shall deposit a fine of Rs.25,000/- with the trial Court within a period of eight weeks. Upon such deposit, the same shall be paid over to Shantaben, widow of Jivalabhai. The direction for payment of fine is in tune with the request of the learned advocate for the appellant who had, on instructions, stated that the appellant is prepared to pay the fine. This was to ensure that the appellant does not have to serve out the substantial sentence of imprisonment. Therefore, in case of default of payment of above fine, he will suffer simple imprisonment of one year.

(Akil Kureshi, J.)

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